of the scheme was the intention to defraud the persons addressed, not out of expectations excited but out of the money or a portion thereof, contributed by them to the scheme. *Durland* v. *United States,* 161 U. S. 306, 16 Sup. Ct. 508, 40 L. Ed. 709; *Brooks* v. *United States,* 146 Fed. 223, 76 C. C. A. 581; *Horman* v. *United States,* 116 Fed. 350, 53 C. C. A. 570; *Weeber* v. *United States,* (C. C.) 62 Fed. 740; *Miller* v. *United States,* 133 Fed. 337, 66 C. C. A. 399. It would seem that willful misrepresentations or exaggeration with intent to induce those receiving the letters to invest their money or enter into a contract with the sender which they would not do but for the representations so made and reliance therein, resulting in a loss finally of profits they had a right to expect, ought to be punished under the statute equally with the taking or appropriation of money already in their hands and contributed to the scheme. The victims of the scheme are by the misrepresentations sent through the mail, deprived of the use of the money invested in an enterprise which they went into relying on the fraudulent misstatements.

VENDOR AND PURCHASER—EXECUTORY LAND CONTRACT—BUILDINGS DESTROYED.—The purchaser of land entered into possession under a contract providing for the payment of five thousand dollars and a bond for twenty thousand dollars to be thereafter given, secured by a mortgage on the land. The vendee had executed a mortgage to the vendor, and the vendor had executed a deed; but formal delivery was deferred until a map mentioned in the instrument could be filed with the deed, when delivery was to be effected by recording the instruments. After this, but before the map was prepared and the instruments recorded, a house on the land burned without the fault of either party. *Held,* that the loss fell on the vendee. *Sewell* v. *Underhill* (1910), — N. Y. —, 90 N. E. 430.

It is said that "the true test, in determining which party should bear the consequences of an accidental loss, pending a contract of sale is, which was the owner at the time." *Lombard* v. *Chicago Sinai Congregation,* 64 Ill. 477; *Gilbert* v. *Port,* 28 Ohio St. 276. Since equity regards that as done which ought to be done, it looks upon the purchaser under an absolute contract for the sale of land as the owner, and he, in the event of the destruction of the buildings by fire, before the performance of the contract, must bear any loss not occasioned by failure of duty on the part of the vendor. This rule was announced in the English case of *Paine* v. *Meller,* 6 Ves. Jr. 349, which case was followed by this court in deciding the principal case. This rule has been adopted by the courts of several states. *Thompson* v. *Norton et al.,* 14 Ind. 187; *Martin* v. *Carver,* — Ky. —, 1 S. W. 199; *Snyder* v. *Murdock,* 51 Mo. 175; *Marion* v. *Wolcott,* 68 N. J. Eq. 20, 59 Atl. 242; *Woodward* v. *McCollum,* 16 N. D. 42, 111 N. W. 623; *Reed* v. *Lukens,* 44 Pa. St. 200. And especially where the vendee has gone into possession. *Wetzler* v. *Duffy,* 78 Wis. 170, 47 N. W. 184, 12 L. R. A. 178. In New York it has been held that, when the buildings are destroyed before the time fixed by the contract for delivery of the deed and payment of the purchase money, the loss will not fall upon the vendee unless he has possession or the immediate right to possession. *Wicks* v. *Bowman,* 5 Daly 225. The doctrine is announced in several cases that the

vendor is the one to bear the loss, the reason given being, that, in every contract for the conveyance of property, there is an implied condition that the subject matter of the contract shall be in existence when the time for performance arrives. If it has ceased to exist when that time arrives, each party is discharged from his contract. *Stent* v. *Bailis,* 2 P. Wms. 220; *Powell* v. *Dayton S. & G. R. R. Co.,* 12 Ore. 488, 8 Pac. 544; *Gould* v. *Murch,* 70 Me. 288, 35 Am. Rep. 325; *Wells* v. *Calnan,* 107 Mass. 514; *Hawkes* v. *Kehoe,* 193 Mass. 419, 10 L. R. A. (N. S.) 125. Where the vendor is unable to make good title, a loss, occurring to the premises by fire, pending the time when he will be able to convey a good title, falls upon him, for the contract is not complete so as to give the purchaser equitable title. *Phinizy* v. *Guernsey,* 111 Ga. 346, 78 Am. St. Rep. 207, 50 L. R. A. 680; *Lombard* v. *Chicago Sinai Cong.,* 64 Ill. 477; *Kinney* v. *Hickox,* 24 Neb. 167; *Christian* v. *Cabell,* 22 Gratt. (Va.) 82. But see *Fernandez* v. *Soulie,* 28 La. Ann. 31.

WILLS—CONSTRUCTION—TECHNICAL WORDS—"HEIRS."—Testator had nine children, five of whom had homes of their own, and to each of whom he had advanced the sum of two thousand dollars and had charged each with this sum in his book of advancements. To the other four he devised his mansion farm as follows: "To my two youngest sons and my two daughters to be held jointly and equally, and in case of the death of one, then that portion shall descend to the other three, and so on until the death of the last one, at which time I direct my executors that they expose the said real estate to public sale and divide the proceeds equally among their heirs, share and share alike." Three of such children died unmarried and the fourth, a son, John, left a widow and three children. The heirs of the four devisees were a surviving brother, Jeremiah, two surviving sisters, Mrs. Gray and Mrs. Buck, the children of Mrs. Henderson, a deceased sister, the children of Mrs. Buck, also a deceased sister, and the children of John who are the appellants here. In disposing of the residue of his estate the testator directed an equal distribution of the same among and between his own lineal heirs. *Held,* on appeal by the children of John, that the entire proceeds of the mansion farm did not go to John's children, but should be divided per stirpes, in six equal parts, among the heirs of the four devisees and as such John's children were entitled to one share. *In re Beck's Estate* (1909), — Pa. —, 74 Atl. 607.

A testator may use the word "heirs" synonymously with "children," but unless his intent to do so can be gathered from the language used, the general rule that the word "heirs" is to be understood in its legal or technical sense, unless the context shows that it was meant in its popular sense, must be applied. *Porter's App.,* 45 Pa. St. 201; *Ely's App.,* 50 Pa. St. 311; *Criswell's App.,* 41 Pa. St. 288; 2 Jarm. Wills *61, Note 1; UNDERHILL, WILLS, § 607. It is significant that in disposing of the residue of his estate the testator directed an equal distribution of the same among his own lineal heirs, while with respect to this particular fund he directs an equal distribution among the heirs of the devisees of the farm. Certainly, as STEWART, J., says in his opinion: "When a testator uses words of technical import, differing in signification from those used with respect to wholly distinct and separate